

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 376 of 1996
CIVIL REVISION APPLICATION NO. 1259 OF 1996
CIVIL REVISION APPLICATION NO. 253 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? no.
2. To be referred to the Reporter or not? no
3. Whether Their Lordships wish to see the fair copy
of the judgement? no
4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? no
5. Whether it is to be circulated to the Civil Judge?
no

UCO BANK

Versus

KAUSHIKCHANDRA BHALCHANDRA BHATT

Appearance:

MR PRANAV G DESAI for Petitioner

MR VS DESAI for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 10/03/99

ORAL JUDGEMENT

All these proceedings arise from three
different orders passed by the Court of the learned Civil
Judge (S.D.) Vadodara in respect of the same subject
matter viz. appointment of a Court Commissioner, in the
same Civil Suit being Special Civil Suit No. 251/84.
Hence with the consent of the learned Counsel for the

parties all the three proceedings are taken up for final hearing together and are being disposed of by this common judgment.

2. The respondent in Appeal from Order No. 376 of 1996 and Civil Revision Application No. 253 of 1998, who is petitioner in Civil Revision Application No.1259 of 1996 (hereinafter referred to as the plaintiff) is a practising Advocate in the Civil Court at Vadodara. The aforesaid suit is filed by the plaintiff for recovery of his fees which he claimed as advocate of the defendant United Commercial Bank (hereinafter referred to as the Bank) for appearing on behalf of the Bank in various suits and execution applications numbering 433 in the aggregate. The defence of the Bank was that the plaintiff was not entitled to get any fees as the plaintiff was already paid retainership fees. Incidentally, the amount of the retainership fees at the relevant time was Rs.150/- per month. According to the Bank the said amount included the fees for appearing in all Court proceedings and also for going to various branches of the Bank in Baroda. According to the plaintiff the retainership fees was for going to various branches of the Bank in Baroda for taking instructions and did not cover the fees for attending the proceedings in the Court. It is not necessary to refer to the said controversy any further as the said dispute is already pending before the trial Court at Baroda.

3. The plaintiff filed Application Ex.102 on 4-4-1995 before the trial Court praying for appointment of a Court Commissioner under rule 10 B of Order 26 CPC particularly for performing of the ministerial acts for verification of the Bills of cost and decrees in those 433 cases of which particulars are given by the plaintiff in Schedules A to D of the plaint. The plaintiff had given the numbers of the suits, date of disposal, amount of Advocate fees as mentioned in the Bill of Cost or as calculated as per the Advocate Fees Rules. The trial Court rejected that application by order dated 2-9-1995 on the ground that it is open to the plaintiff to prove his case by his own evidence and the Court machinery could not be used for collecting evidence on behalf of the plaintiff.

4. The plaintiff however filed Civil Misc. Application No. 164 of 1995 of praying for review of the order dated 2-9-1995 on the ground that what the plaintiff had prayed for vide application Ex.102 was not for collection of evidence or to make any roving inquiry

but the only idea in giving the said application with particulars regarding the decrees/execution applications was to save time and energy of the ministerial staff of the Court in preparing the certified copies of the decrees and the Bills of Cost for 433 matters which would unnecessarily consume considerable time and energy of the ministerial staff of the Civil Court. The Court granted the review application by order dated 20-2-1996 and set aside the order dated 2-9-1995 passed below Application Ex.102 and directed that Application Ex.102 be heard on its merits.

5. Against the said order dated 20-2-1996 the defendant Bank has filed Appeal from Order No.396 of 1996 in this Court. Since the impugned order dated 20-2-1996 came to be stayed by this Court during pendency of the appeal from order, the plaintiff has filed Civil Revision Application No. 1259 of 1996 for challenging the original order dated 2-9-1995 below Application Ex.102 contending that the trial Court erred in dismissing the said Application Ex.102 by the said order dated 2-9-1995 and that the trial Court ought to have allowed application Ex.102.

6. During pendency of the aforesaid Appeal and the Revision Application the plaintiff filed another Application, (Ex. 116) purporting to be an application under Rules 11 and 12 of Order 26 CPC praying for appointment of a Court Commissioner to examine the accounts for verification of the advocates fees claimed as per Schedules A to D and to appoint a competent Advocate or Officer of the Court to carry out the said examination and to submit the report thereon and further to direct the parties to the suit to furnish the true copies of such part of the records and proceedings and also to direct the record keeper of the Court to make available the record of the Court for inspection as may be required by the Court Commissioner for such examination. That application filed by the plaintiff on 30-9-1996 was also, opposed by the defendant Bank but the Court passed the impugned order dated 19-11-1997 appointing an employee of the District Court as Court Commissioner to inspect the Accounts underlying the Advocate's fees claimed as per Schedule A to D of the plaint. The Court Commissioner was also authorised to examine the record of the Court and the Record Keeper of the Court was also instructed to make the record of the Court available for inspection of the Court Commissioner in order to enable him to prepare the report. It is against the aforesaid order dated 19-11-1997 that the defendant Bank has filed Civil Revision Application

7. In the meantime by Notice Ex.129 the plaintiff had called upon the defendant Bank to produce the certified copies of the decrees and the Bills of Cost to prove his claim. The Bank declined to give such copies as per reply Ex.131 stating that the certified copies of the decrees and the bills of cost are public documents which the plaintiff could obtain by applying for the same before the Civil Court at Baroda.

8. At the hearing of these proceedings Mr.P.G.Desai, learned Counsel for the defendant Bank has vehemently challenged the order dated 19-11-1997 passed by the trial Court. The learned Counsel for the bank has submitted that certified copies of the decrees and the Bills of costs were public documents which the plaintiff could have obtained by applying for the same and for this purpose the trial Court was not justified in appointing Court Commissioner as it would amount to the Court collecting evidence on behalf of the plaintiff.

9. On the other hand Mr.V.S.Desai learned Counsel for the plaintiff has submitted that the suit is pending since 1984 and if the Civil Court were to reject the defendant- Bank's objection to the plaintiff's case on merits the Court would have to quantify the amount which the defendant bank would be liable to pay to the plaintiff. Hence the report of the Court Commissioner was necessary in order to ascertain the exact amount which is payable by the defendant Bank to the plaintiff. The Court Commissioner has been appointed merely to carry out the ministerial work of looking into the original decrees and bills of cost and to verify whether the claim made by the plaintiff in his plaint as Advocate's fees in the concerned suits/execution application as per the particulars given in the plaint was correct or not. It is further stated at the Bar that the Court Commissioner was not joined as a party to the Appeal from Order and that in the meantime the Court Commissioner has already submitted his report dated 29-10-1998 stating that he was in a position to examine the record of 376 suits and execution applications and that for the remaining 56 suits/darkhasts verification could not be made as there was some mistake or inaccuracy in giving the suit number or the date of disposal. The particulars of those cases are given in Annexure C to the Report . Schedules A and B to the Report contain the verification of the claim for Advocate fees in 376 suits/execution proceedings.

10. Having heard the learned Counsel for the parties, it appears to the Court that when the suit is pending since 1984 and ultimately if the Civil Court were to uphold the plaintiff's contention and reject the defendant's contention on merits, the parties would have to be required to lead evidence by production of certified copies of the decrees/Bills of Cost. Mr.Desai learned Counsel for the plaintiff is,therefore, justified in submitting that production of the certified copies of as many as 433 Decrees/Bills of Cost would not have only heavily burdened the record by 2000 pages but supplying certified copies of the Decrees/Bills of Cost in 433 matters, would have consumed months of the staff of the Civil Court, preventing them from supplying certified copies to other parties in a large number of other matters. It appears to the Court that the impugned order passed by the Civil Court for verifying the plaintiff's claim was merely a ministerial act of verifying the original record of the 433 cases so that the record of 433 cases was not required to be brought to the particular Court room, nor was the staff of the Court required to prepare certified copies of decrees/Bills of cost in 433 matters. This Court is therefore, of the view that in the peculiar facts and circumstances of the case the trial Court did not err in appointing the Court Commissioner for verifying the plaintiff's claim for advocate's fees in 433 suits/execution proceedings.

11. Mr.P.G. Desai, learned Counsel appearing for the defendant Bank of course has vehemently submitted that the trial Court did err in allowing the review application by impugned order dated 20-2-1996 as the order dated 2-9-1995 could not have been reviewed within the four corners of Order 47 rule 1 of the CPC. Mr.V.S.Desai has thereupon submitted that assuming that the trial Court was not justified in reviewing the order dated 2-9-1995, even then the plaintiff's CRA No.1259/96 is very much before this Court wherein the plaintiff has challenged the order 2-9-1995 below Ex.102.

12. It does appear that the trial Court had committed jurisdictional error in holding that by getting appointed Court Commissioner the plaintiff was attempting to collect evidence through the machinery of the Court. The plaintiff had given all the particulars of the suits i.e. suit number, dates of disposal, amount of advocate fees claimed by the plaintiff in all the matters. All the particulars were given in the Schedules to the plaint and therefore, it cannot be said that the plaintiff had requested the Court to collect evidence. As already stated above the plaintiff was merely requesting the

Court to get the plaintiff's claim as contained in the plaint verified from the original record of 433 cases lying in the Court premises and therefore, only the time and energy of the Court staff were sought to be saved by not applying for certified copies of the decrees/bills of costs in the 433 cases. It was therefore, not correct on the part of the trial Court to hold in the order dated 2-9-1995 below Ex.102 that the plaintiff was trying to collect evidence. The trial Court acted illegally and with material irregularity in rejecting Application Ex.102 by order dated 2-9-1995 on the ground which was not at all justified and therefore, the trial Court had misdirected itself and declined to exercise the jurisdiction vested in it. The impugned order dated 2-9-1995 did therefore, suffer from a jurisdictional error. Application Ex.102 was certainly required to be granted.

13. Moreover, now when the Court Commissioner's Report dated 29-10-1998 is already before the Court and the certified copy thereof has also been produced on the record of these proceedings, the Court does not think it proper to set at naught all the efforts, time and energy invested by the Court Commissioner in examining the record and preparing the report. The Civil Court, shall, therefore, keep on record the Report of the Court Commissioner and proceed with the trial of the suit in accordance with law as expeditiously as possible and in any case within six months from the date of receipt of a certified copy of this judgment or from the date of receipt of writ of this Court, whichever is earlier.

As regards the 57 Decrees/Bills of Cost for which the Court Commissioner has not been able to give his report as stated in Appendix C to the Report, it will be open to the plaintiff to supply further particulars or to make request to the defendant bank to make available copies of such decrees /Execution Applications as may be available with the defendant bank. Since the Bank is in possession of the record i.e. certified copies of the Decrees/Bills of Cost, it would be just and fair on the part of the defendant bank to supply the copies of such decrees/Bills of cost in the proceedings which are mentioned in Schedule C to the Commissioner's report.

14. It is clarified that this Court has not gone into the merits of the major controversy between the parties and this order is confined to the appointment of the Court Commissioner only.

15. The Appeal from Order and the Civil Revision Applications are accordingly disposed of in terms of the aforesaid directions and observations.

16. Civil Application No.1303/99 does not survive as the main matters are disposed of. The Civil Application accordingly stands disposed of.

(M.S.Shah J.)